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WALKER, NED ANDREW				
ART UNIT		PAPER NUMBER		
3788				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

**Office Action Summary****Application No.**

10/570,580

**Applicant(s)**

ALVARES ET AL.

**Examiner**

NED A. WALKER

**Art Unit**

3788

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1-3,6-11 and 13 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-3,6-11 and 13 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 01 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CIBIS)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/12/2010 has been entered.

### ***Claim Objections***

**2. Claims 9 and 10 objected to because of the following informalities:**

➤ **Claim 9**

- Please delete the extraneous space in the second to last line denoted by "lid , and"; appropriate correction of the typographical error is required.

➤ **Claim 10**

- Claim 14 recites the grammatical error "upwardly projected the peripheral lateral wall"; appropriate correction of the typographical error is required.

**3. Claims 1-3, 6-11, 13 are objected to because of the following informalities:**

The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

**4. Claims 1-3, 6-11, 13 are objected to for incorporating the *supra* errors from their respective parent claim by dependency.**

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. **Claims 1-3, 6-11, 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 1-3, 6-11, 13 are replete with issues of lacking antecedent basis, including, but not limited to the following terms recited throughout the claims that have insufficient antecedent basis for their respective limitation in the claims:

- |  |  |
|--|--|
| • "the annular upper wall"                   | • "the latter"   |
| • "the interior"                             | • "the closing condition"  |
| • "the external edge"                        | • "its height"   |
| • "the peripheral lateral wall"              | • "the edge"   |
| • "it"                                       | • "the points"   |
| • "the height"                               | • "the same circumferential alignment<br>concentric to the axis" |
| • "said point"                               | • "the center"   |
| • "the axis"                                 | • "the external peripheral flange"                               |
| • "the external radial extension<br>portion" | • "the peripheral flange"  |
| • "circle"                                   | • "the small radial extensions"                                  |
| • "which"                                    | • "the rupture"  |
| • "the portion"                              | • "whose external edge"  |

7. Claims 2, 3, 6-11, and 13 are rejected under 35 U.S.C. 112, second paragraph, for incorporating the *supra* errors from their respective parent claim by dependency.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**9. Claims 1-3, 6, 7, 10, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Coyle et al. (US Pat. No. 2,535,840).**

Coyle et al. discloses a can (FIGS. 1-5) for bulk products, comprising: a tubular body in metallic sheet (FIGS. 1, 5), having at least one peripheral lateral wall (1), wherein: an internal face of the annular upper wall turned to the interior of the tubular body presents an internal radial extension portion (5, 6, 7) and an external radial portion (2), and an internal edge (9) defining an opening, the external edge (3) of the annular upper wall is double seamed to an upper edge of the peripheral lateral wall of the tubular body (FIG. 5) and a lid (11) is configured to be removably fitted and retained in the opening of the can, in order to close it (FIGS. 1-5), wherein any point of said internal face of the upper annular wall is disposed at a height, measured in the interior of the tubular body, at a minimum equal to the height of another point of said internal face disposed in a radially external manner, aligned and adjacent in relation to said point (any particular reference points in FIGS. 1-5 can be selected to satisfy this), wherein the internal radial extension portion is adjacent to the opening and disposed in a first plane

orthogonal to the axis of the tubular body (FIGS. 2-5), wherein the external radial extension portion is adjacent to the peripheral lateral wall of the tubular body and is disposed in a second plane orthogonal to the axis of the tubular body (FIGS. 2-5); wherein the internal radial extension portion and the external radial extension portion of the internal face are interconnected via a portion (4) which takes the form of a kind of slope which continuously is inclined upwardly and toward the opening of the tubular body (FIG. 5), wherein the internal edge of the annular upper wall is upwardly and radially outwardly bent to form a circumferential rib (8, 10); wherein said lid has a peripheral lateral wall (12) externally provided with a circumferential cradle presenting a cross section in the form of an arc of circle (FIGS. 2-5) and within which is fitted the portion in the form of an arc of a circle of the circumferential rib (FIGS. 2-5), said peripheral lateral wall of the lid having an upper section incorporating an external peripheral flange seated on the circumferential rib upon fitting the latter in the circumferential cradle of the lid, which is maintained in the closing condition of the opening (FIGS. 1-5); and wherein the annular upper wall has its height limited by a fourth plane containing the edge of the peripheral lateral wall of the tubular body (FIGS. 1-5); wherein the points of the internal face of the annular upper wall, disposed according to the same circumferential alignment concentric to the axis of the tubular body, are contained in a third plane orthogonal to said axis (FIGS. 1-5); wherein along at least one portion of the annular upper wall, the internal face of the latter presents a height which progressively and continuously increases toward the opening (FIGS. 1-5); wherein the circumferential rib presents a cross section defined by at least one portion

of an arc of a circle with the center in a plane orthogonal to the axis of the tubular body and medianly sectioned by said plane (FIGS. 1-5); wherein the external peripheral flange is continuous and seated on an adjacent portion of the annular upper wall of the can, when the lid is closed (FIGS. 1-5); wherein the lid comprises a basic annular wall, from whose external edge is upwardly projected the peripheral lateral wall, which is internally incorporated to an upwardly displaced central tubular drawn portion (FIGS. 1-5); wherein the lid is made of any one of the materials defined by plastic, metal, and compositions thereof (Col 1 line 34; FIGS. 1-5); characterized in that wherein the peripheral lateral wall of the lid has an upper section incorporating an external peripheral flange which is seated on the circumferential rib upon fitting the latter in the circumferential cradle of the lid, which is maintained in the closing condition of the opening (FIGS. 1-5).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**12. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being obvious over Coyle et al. (US Pat. No. 2,535,840) in view of von Holdt (US Pat. No. 5,842,593).**

Coyle et al. disclose substantially all the limitations of the claims, as applied in the rejection above, except for the radial extensions, breakable connections and handles. Von Holdt teaches that it is known to provide a lid with radial extensions and breakable connections which secure handles to the lid (see figures 6-8). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Coyle et al. with handles and handle attaching means, which include the radial extensions and breakable connections, as taught by von Holdt, in order to allow easy carrying of the container.



***Information Disclosure Statement***

13. The listing of references in the specification is not a proper information disclosure statement (IDS). 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specifically, the Examiner notes that at least the prior art reference US Pat. No. 795,126 is mentioned in the Specification without being designated on the IDS filed 03/01/2006 or the IDS filed 08/11/2006.

***Drawings***

**14. New corrected drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121 are required in this application because:**

The drawings contain deficient line quality. All drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line must be durable, clean, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. Refer to 37 CFR 1.84(l). See Figure(s) 1-10.

The drawings are improper since they contain copy marks. The drawings must be reasonably free from erasures and must be free from alterations, overwriting, interlineations, folds, and copy marks. Refer to 37 CFR 1.84(e). See Figure(s) 1-10.

The drawings make improper use of shading. The use of shading in views is encouraged if it aids in understanding the invention and if it does not reduce legibility.

Shading is used to indicate the surface or shape of spherical, cylindrical, and conical elements of an object. Such shading is preferred in the case of parts shown in perspective, but not for cross sections. Solid black or gray shading areas are not permitted, except when used to represent bar graphs or color. Refer to 37 CFR 1.84(m) and 1.84(h(3)). See Figure(s) 1-3.

The drawings make improper use of shading because they contain solid black shading areas. The use of shading in views is encouraged if it aids in understanding the invention and if it does not reduce legibility. Shading is used to indicate the surface or shape of spherical, cylindrical, and conical elements of an object. Such shading is preferred in the case of parts shown in perspective, but not for cross sections. Solid black shading areas are not permitted, except when used to represent bar graphs or color. Refer to 37 CFR 1.84(m) and 1.84(h(3)). See Figure(s) 1-3.

The drawings contain improper sectional views and/or sectional view references. The entire plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. Refer to 37 CFR 1.84(h(3)). See Figure(s) 1-10.

The drawings contain improper hatching within sectional views. Hatching must be used to indicate section portions of an object, and must be made by regularly spaced

oblique parallel lines spaced sufficiently apart to enable the lines to be distinguished without difficulty. A cross section must be set out and drawn to show all of the materials as they are shown in the view from which the cross section was taken. The parts in cross section must show proper material(s) by hatching with regularly spaced parallel oblique strokes, the space between strokes being chosen on the basis of the total area to be hatched. Refer to 37 CFR 1.84(h)(3). See Figure(s) 1-10.

The drawings appear to present exploded view(s) missing bracket(s). Exploded views, with the separated parts embraced by a bracket, to show the relationship or order of assembly of various parts are permissible. When an exploded view is shown in a figure which is on the same sheet as another figure, the exploded view should be placed in brackets. Refer to 37 CFR 1.84(h)(1). See Figure(s) 1, 5.

The drawings are improper because they contain projection lines and/or imaginary lines connecting different parts and/or lines depicted between different parts of an exploded view. Views must not be connected by projection lines and must not contain center lines. Refer to 37 CFR 1.84(h). See Figure(s) 1, 5.

The drawing sheet numbering is formatted improperly. The drawing sheet numbering must be clear and larger than the numbers used as reference characters to avoid confusion. Refer to 37 CFR 1.84(t). See page(s) 1-8.

15. Corrected drawing sheets in compliance with 37 CFR 1.121(d) according to the following objections are required in reply to the Office action to avoid abandonment of the application. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the USPTO no longer prepares new drawings. Any

amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

### ***Specification***

#### **16. Title**

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

#### **17. Abstract**

The abstract of the disclosure is objected to because it contains legalese, and/or claim-type language. Correction is required. *See* MPEP § 608.01(b).

Refer to the discussion provided below which details the requirements of the Abstract:

- i) Applicant is reminded of the proper content of an abstract of the disclosure.
- A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.
  - The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.
  - Where applicable, the abstract should include the following:
    - (1) if a machine or apparatus, its organization and operation;
    - (2) if an article, its method of making;
    - (3) if a chemical compound, its identity and use;
    - (4) if a mixture, its ingredients;
    - (5) if a process, the steps.
  - Extensive mechanical and design details of apparatus should not be given.
- ii) Applicant is reminded of the proper language and format for an abstract of the disclosure.
- The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.
  - The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

**18. Disclosure**

19. The disclosure is objected to because of the following additional informalities:

In addition to the specific issues cited *infra*, the arrangement and content of the Specification are improper because it appears to be a verbatim filing or machine translation of the instant inventor's original Foreign Application to which priority is claimed; consequently, it has not been amended to conform to USPTO standards and requirements and is deficient with respect to both formatting and content. For example, the Specification lacks the required headings and their associated content. See the guidelines outlined below.

The specification spacing is not properly formatted. The spacing of the lines of the specification is such as to make reading difficult. New application papers with lines 1½ or double spaced on good quality paper are required.

The specification is objected to for omitting paragraph numbers which aid in referencing parts of the application throughout the prosecution. The paragraphs of the specification, other than in the claims or abstract, should be individually and consecutively numbered using Arabic numerals, so as to unambiguously identify each paragraph. See 37 CFR 1.52(b)(6).

20. The following guidelines illustrate the preferred layout and content for the specification of a utility application. These guidelines are suggested for the applicant's use. As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order with each section including the applicable content according to the section descriptions provided below. Each of the lettered items

(heading only) should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78; MPEP §201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP §310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
  - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
  - (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should

be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

- (h) Brief Description of the Several Views of the Drawing(s): See MPEP §608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).
- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit a separate abstract if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing: See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc.



***Response to Arguments***

**21. Applicant's arguments, see amendment filed 10/12/2010, with respect to the rejection of Claims 1-3, 6, 7, and 10-13 under 35 USC §103(a) as being unpatentable over Coyle et al. (US Pat. No. 2,535,840) in view of La Croce et al. (US Pat. No. 3,814,277), have been fully considered but are not persuasive.**

22. In response to Applicant's argument that the Coyle et al. reference fails to show certain features of Applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

23. In response to Applicant's argument that the Coyle et al. reference includes additional structure and/or function not required by Applicant's invention, it must be noted that the reference discloses the invention as claimed. The fact that the prior art discloses additional structure and/or function that is not claimed is irrelevant in determining anticipation. "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." *In re Heck*, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)).

24. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically

pointing out how the language of the claims patentably distinguishes them from the references.

25. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

26. The remainder of the Applicant's arguments with respect to the rejection of Claims 1-3, 6, 7, and 10-13 under 35 USC §103(a) as being obvious over Coyle et al. in view of La Croce et al. have been fully considered but are moot in view of the new ground(s) of rejection under 35 USC §102(b).

### ***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED WALKER whose telephone number is (571)270-3545. The examiner can be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Pickett can be reached on 571-272-4560. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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